

EXHIBIT 4

CONFIDENTIAL - ATTORNEYS EYES ONLY

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3 SONOS, INC.,
4 Plaintiff,
5 vs. Case No. 3:21-CV-07559-WHA
6 GOOGLE LLC
7 Defendant.

8 -AND-

9
10 GOOGLE LLC,
11 Plaintiff,
12 vs. Case No. 3:20-CV-06754-WHA
13 SONOS, INC.,
14 Defendant.

15 **CONFIDENTIAL - ATTORNEYS' EYES ONLY**

16 ZOOM DEPOSITION OF JAMES E. MALACKOWSKI
17 (Reported Remotely via Video & Web Videoconference)
18 Miami, Florida (Deponent's location)

19 Monday, January 30, 2022

20 Volume 1

21 STENOGRAPHICALLY REPORTED BY:
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25 JOB NO. 5686085
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1 A. There are three which are identified by 10:19:10
2 name within my report.

3 Q. How many hours have they billed to this
4 matter to date?

5 A. I don't know. Mr. Hess is the billing 10:19:18
6 partner. But I suspect their time commitment is
7 the same or greater than mine.

8 Q. And what are the -- the billable rates --
9 or withdrawn.

10 What are the billing rates of those 10:19:32
11 individuals who assisted you in preparing these
12 reports?

13 A. They range from, I believe, approximately
14 \$225 an hour to approximately \$595 per hour.

15 Q. Do you know how much Ocean Tomo has 10:19:46
16 billed for your team's work on this case?

17 A. I don't. It would be substantial,
18 several hundred thousand dollars, but I don't know
19 the total.

20 Q. You agree that lost profits is not the 10:19:57
21 appropriate form of compensation here, correct?

22 A. Well, ultimately that's a decision for
23 the fact-finder. I am not offering a lost profits
24 calculation as part of my expert work.

25 Q. Your report relies in part on opinions of 10:20:12

1 does not practice? 02:49:28

2 A. Yeah. You don't need to practice the
3 patent yourself in order to lose sales to a third
4 party who does practice. That's not a requirement.

5 Cases are very specific to that point. 02:49:40

6 Q. You're talking about the Panduit factors?

7 A. Well, Panduit factors focus on the -- one
8 measure of lost profits methodology, but there are
9 cases that specifically have awarded lost profits
10 to patent holders who do not practice the specific 02:49:57
11 claim asserted against the defendant.

12 Q. Right, but we're not talking about a lost
13 profits methodology here. I'm just asking you
14 about your -- your opinions about Sonos lost sales.

15 And so I -- I appreciate that it may not 02:50:10
16 be required for the patent holder to practice the
17 product under a lost profits analysis, but that
18 wasn't my question.

19 My question is do you believe that Sonos
20 has lost sales due to Google's purported 02:50:24
21 infringement of the '033 patent, even though Sonos
22 does not practice that patent?

23 A. Yes, I do believe that. I have not
24 quantified that.

25 Q. Are you aware of any specific sales that 02:50:36

1 Sonos has lost due to Google's infringement of the 02:50:38
2 '033 patent?

3 A. No.

4 Q. Are you aware of any specific sales that

5 Sonos has lost due to Google's infringement of the 02:50:46
6 Zone Scene patents?

7 A. No. If you're talking about a sale to a
8 particular customer or a retailer, no, I don't have
9 data that would allow me to do that. Obviously
10 there's information describing Google's desire to 02:50:59
11 be within the same retail locations on the same
12 shelves, the perception of directly competing or
13 their view of directly competing, but I can't
14 quantify that.

15 And this is one of the realized benefits 02:51:12
16 of the efficient infringement methodology that
17 Google's practicing. They're not going to be
18 charged with lost profits in this case.

19 Q. Let's see. On page 221 in the second
20 paragraph, you go on to opine, middle of the 02:51:30
21 paragraph: "For example, the Google Home Mini
22 predatorily implemented Sonos' valuable patented
23 technology into an all-in-one wireless multiroom
24 product that Google sells at a highly subsidized
25 price point or even gives away for free." 02:51:46

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1 products? 03:16:48

2 A. I think that's generally the same
3 question but with different descriptors. And yes,
4 there are other components in the players that are
5 not covered specifically by the '885, as I 03:16:58
6 understand it.

7 Q. Would you agree that the accused grouping
8 functionality is not the primary or main component
9 of the accused Google media content players?

10 A. Yes. 03:17:12

11 Q. Do you -- is it your opinion that the
12 accused '885 functionality drives demand for
13 accused Google media content players?

14 A. In part, but not sufficient to determine
15 a lost profits calculation. 03:17:31

16 Q. So you believe that consumers are buying,
17 for example, the Nest Wi-Fi Point because of the
18 accused grouping functionality?

19 A. I believe that one of the reasons is the
20 feature set that would include that, and that is, 03:17:49
21 in part, why that feature set is promoted by
22 Google. I don't believe that it's sufficient basis
23 for demand for lost profits or to invoke the entire
24 market rule, for example, and expand greatly the
25 royalty base. 03:18:06

1 I, Rebecca L. Romano, a Certified Shorthand
2 Reporter of the State of California, do hereby
3 certify:

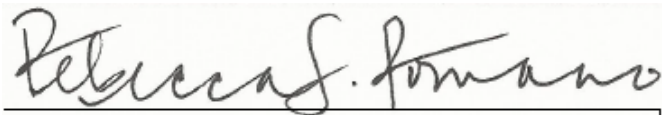
4 That the foregoing proceedings were taken
5 before me remotely at the time and place herein set
6 forth; that any deponents in the foregoing
7 proceedings, prior to testifying, were administered
8 an oath; that a record of the proceedings was made
9 by me using machine shorthand which was thereafter
10 transcribed under my direction; that the foregoing
11 transcript is true record of the testimony given.

12 Further, that if the foregoing pertains to the
13 original transcript of a deposition in a Federal
14 Case, before completion of the proceedings, review
15 of the transcript [] was [X] was not requested.

16 I further certify I am neither financially
17 interested in the action nor a relative or employee
18 of any attorney or any party to this action.

19 IN WITNESS WHEREOF, I have this date
20 subscribed my name.

21 Dated: February 2, 2023

22
23 
24

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